In the Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 237.

THE DISTRICT OF COLUMBIA, APPELLANT,
v.
COLUMBUS J. ESLIN, ADMINISTRATOR OF Daniel J. Connolly, deceased;

and

THE DISTRICT OF COLUMBIA, APPELLANT,
v.
SAMUEL J. RITCHIE;

and

THE DISTRICT OF COLUMBIA, APPELLANT,
v.
HARRIET T. GALT, ADMINISTRATRIX OF William M. Galt;

and

THE DISTRICT OF COLUMBIA, APPELLANT,
v.
WILLIAM A. GORDON AND I. HOLDSworth Gordon, executors of Osceola C. Green, surviving partner of Downman & Green.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANT.

STATEMENT.

Under the provisions of the act of Congress of February 21, 1871, ch. 62, sec. 37 (16 Stat. L., 427), Daniel

A. Connolly had eleven contracts with the District of Columbia for the improvement of the streets of Washington. On the 2d day of April, 1883, he filed his original petition, claiming that he was entitled to recover a large amount due upon such contracts. This petition, as finally amended, standing in the name of Columbus J. Eslin, as administrator, states his causes of action against the District, upon contracts numbered 209, 231, 1035, 243, and extensions, 349, 595, 1057½, 665, 690, 828, and 1028.

Prior to the bringing of this suit, however, three several suits were brought by parties claiming to be assignees of Connolly, as follows: By Downman & Green, by petition filed December 15, 1880, claiming to be assignees of balances due upon contracts 243 and 1028; by William M. Galt, by petition filed November 26, 1880, claiming to be assignee of balances due under contract 243; Samuel J. Ritchie, by petition filed November 20, 1880, claiming, as assignee, to be entitled to balances due under contracts 243 and 1028. By order of the Court of Claims these several suits were consolidated and tried as one case (Record, pp. 15, 17, 6). Connolly died, and that suit progressed in the name of his administrator, Columbus J. Eslin. Downman died, and that suit progressed in the name of Osceola C. Green, as surviving partner. The cases having come on for trial and been heard on the 31st day of October, 1887, judgments therein were entered as follows: In the case of Columbus J. Eslin, administrator of Connolly, upon petition of the claimant and the counterclaim of the defendant, the court finds, upon the whole

case, that the claimant is indebted to the defendant in the sum of $658.05, and do order, adjudge, and decree that the defendant, the District of Columbia, do have and recover of and from the said Columbus J. Eslin, as administrator of Daniel A. Connolly, deceased, the sum of $658.05.

In the other suits, the suits of the three assignees, the court ordered, adjudged, and decreed that the several petitions be dismissed.

At the same term of court all the claimants in these consolidated cases filed motions for new trials. These motions set up substantially the same grounds.

On the 7th day of November, 1889, the death of William M. Galt was suggested, and that suit revived in the name of Harriet T. Galt, as executrix.

The motions for new trials were not disposed of until November 13, 1893, when the following order was made by the court: "That the motions of the claimants for new trials in these cases be allowed under the terms of the order of the court this day filed;" which order provides: "As to the allegations made by way of counterclaim, the affirmative is on the defendants. Leave is given both parties to take further testimony, which shall be closed January 31, and the cases shall be put upon the February term calendar." The consolidated cases were again heard and decided on the 28th day of May, 1894. Findings of fact and opinion by Judge Davis were filed. (Record, pp. 28 to 48). The findings of fact, although fuller, are substantially—almost entirely—the same as the findings in

the case decided October 31, 1887, as stated in the report of the case in 22 Court of Claims, ——, and in the opinion of Judge Scofield, delivered at that time. (Record, pp. 18–20). The judge, delivering the opinion of the court in the case last decided, stated at the close thereof: "During the trial it was stated that all the questions between the different assignees were reserved. Judgment will therefore be suspended." (Record, p. 48.)

Nothing further was done in these claims until after the passage of the act of February 13, 1895, which is as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in the adjudication of claims brought under the provisions of the act entitled "An act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction on the Court of Claims to hear the same, and for other purposes," approved the sixteenth of June, eighteen hundred and eighty (Twenty-first Statutes at Large, page two hundred and eighty-four), the Court of Claims shall allow the rates established and paid by the board of public works, and whenever said rates have not been allowed the claimant or his personal representtive shall be entitled, on motion made within sixty days after the passage of this act, to a new trial of such cause.

A new trial was allowed to these claimants under this statute. The consolidated cases were sent to a

referee to take and state the accounts between the claimants and the District under the contracts set forth in the petitions. The referee made his report under the said act of 1895. The defendant filed exceptions to the same. On June 22, 1896, the court overruled the defendant's exceptions and confirmed the report, and adopted the same as the findings of the court, and also found that the distribution of the amount found due, to wit, $13,458.33, as agreed upon by and between the claimants as stated by the referee in his report, the court adopts.

The court then stated the following conclusions of law (Rec., p. 49):

> Upon the facts stated in the referee's report the court, under the act of February 13, 1895 (28 Stat. L., 664), and in accordance with the agreement of the parties, decides as conclusions of law as to the said sum of $13,458.33 so found due from the District of Columbia, that the several claimants named below each recover judgment against the United States (District of Columbia) in the amounts stated, viz:
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> | | |
> |---|---|
> | In favor of Columbus J. Eslin, administrator of Daniel A. Connolly, cause No. 375 | $4,841.26 |
> | In favor of Samuel J. Ritchie, cause No. 150 | 5,339.30 |
> | In favor of Harriet T. Galt, executrix of William M. Galt, cause No. 162 | 2,027.01 |
> | In favor of William A. Gordon and J. Holdsworth Gordon, executors of Osceola C. Green, surviving partner of Downman & Green, cause No. 280 | 1,250.76 |
> | Amounting in all to | 13,458.33 |

which said sum, and as well the several amounts composing the same, were due and payable February 1, 1876. (Record, pp. 48–66.)

Whereupon the court entered this judgment:

At the Court of Claims held in the city of Washington on the 22d day of June, 1886, judgment was ordered to be entered, as follows, in the consolidated cases of Columbus J. Eslin, administrator of Daniel A. Connolly, deceased, against the District of Columbia, No. 375; Samuel J. Ritchie against the same, No. 150; Harriet T. Galt, executrix of William M. Galt, deceased, against the same, No. 162; William A. Gordon and J. Holsworth Gordon, executors of Osceola C. Green, surviving partner of Downman & Green, against the same, No. 280.

The court, upon due consideration of the premises, find for the claimants, and do order, adjudge, and decree that the said Columbus J. Eslin, as administrator of Daniel J. Connolly, deceased, do have and recover the sum of $4,841.26; that the said Samuel J. Ritchie do have and recover the sum of $5,339.30; that the said Harriet T. Galt, as executrix of William M. Galt, deceased, do have and recover the sum of $2,027.01; and that William A. Gordon and J. Holdsworth Gordon, as executors of Osceola C. Green, surviving partner of Downman & Green, do have and recover the sum of $1,250.76, amounting in all to the sum of $13,458.33, upon debts of the District of Columbia due and payable February 1, 1876, within the intent and meaning of the act of February 13, 1895. (Record, p. 66.)

The several amounts recited in this judgment were apportioned under the stipulation entered into by and between the attorneys for the original claimant and the several assignees herein mentioned, included in the report of the referee and made a part of the conclusion of law of the court in the consolidated cases. (Record, pp. 49, 64, 65, 66.)

From this judgment the defendant made application for and gave notice of an appeal to the Supreme Court on the 3d day of September, 1896. On February 25, 1897, a motion for new trial was made by defendant, which motion was overruled on January 15, 1900. On March 1, 1900, the appeal to the Supreme Court from the judgment of June 22, 1896, was allowed.

After the judgment of June 22, 1896, and the notice of appeal, but before the perfection of the appeal, by act of Congress "making appropriations for the District of Columbia," approved March 3, 1897 (29 Stat. L., 665, 669), it was enacted:

> That the act approved February thirteenth, eighteen hundred and ninety-five, entitled "An act to amend an act entitled 'An act to provide for the settlement of all outstanding claims against the District of Columbia, and conferring jurisdiction upon the Court of Claims to hear the same, and for other purposes,' approved June sixteenth, eighteen hundred and eighty," be, and the same is hereby, repealed, and all proceedings pending shall be vacated and no judgment heretofore rendered in pursuance of said act shall be paid.

The Court of Claims, on the 8th day of March, 1897, made the following order:

> The act of 13 February, 1895 (28 Stat. L., p. 664), having been repealed by Congress, it is ordered in all suits brought under or subsequent to said act that motions for new trial, applications for judgments, and all other papers in such suits be restored to and retained upon the files of the court without further proceedings being had.

In the opinion of the court at the first trial of the cause, delivered by Judge Scofield, it is said:

> By a careful comparison of the dates of the papers under which the rights of the claimants in cases Nos. 150, 162, and 280 originated with the dates of the overpayments, it appears that Connolly, during all that time, was indebted to the District. It is true that, upon the settlement of the same, all the assigned contracts' balances are now found to have been due to Connolly, but these balances could not be assigned so as to escape the set-off of balances then existing on other contracts in favor of the District.
>
> In cases Nos. 150, 162, and 280 the petitions are dismissed, and in No. 375 judgment will be entered in favor of the defendant in the sum of $658.05. (Record, p. 20.)

Nos. 150, 162, and 280 were the cases brought by the assignees. No. 375 was the case of the original claimant, Connolly.

In the opinion of the court at the second trial of these cases it is stated as follows:

> We now again hold that the District can recover back the overpayment; but this only as to Connolly, the contractor.
>
> Otherwise is it as to his assignees; between Connolly and the defendants it may be well enough to make a general account covering all his contracts, and, after striking a balance, to cause the defendant to pay the sum due him or to authorize the defendant to recover the sum due from him as the results may be in Conolly's favor or against him. But an assignee of the contract which is profitable can not be charged with his assignor's loss upon another entirely different and losing contract when, as in this case, he has furnished the money upon which the contract was completed with the knowledge of the defendant. The rights of Connolly's assignees are (under the assignment, of which defendant had notice) not to be confounded with Connolly's rights, or his duties, or his liabilities; if his assignees' assignment be of a profitable contract, upon which something now remains due and unpaid, recovery can not be defeated upon the fact that Connolly now owes the District upon another and losing contract with which the assignees are in no way connected. (Record, pp. 47, 48.)

The accounts between the parties before the act of 1895 are set out in the findings (22 C. Cls. R., 395–398) and in the opinion of the court (Record, p. 20). It is stated, in the opinion, as a finding of fact and conclusion of law:

> By a careful comparison of the dates of the papers under which the rights of the claimants

in cases Nos. 150, 162, and 280 originated, with the dates of the overpayments, it appears that Connolly during all that time was indebted to the District. It is true that upon a settlement of some of the assigned contracts balances are now found to have been due to Connolly, but these balances could not be assigned so as to escape the set-off of balances then existing on other contracts in favor of the District.

The assignments are confined to the contracts Nos. 243 and extensions and 1028. There is nothing in the findings of fact made at the second trial of the cause differing from the above statement.

The assignment from Connolly to Galt was made after all the work was completed under these contracts. (Record, p. 36, Finding V, p. 39, Finding XI.)

The interest of Downman & Green, if they had any, was assigned to Ritchie after the work on all the contracts sued on had been performed (Record, p. 45), and during all the time of the powers of attorney and agreements from Connolly to Downman & Green, found in the Record, p. 42–45, Connolly was indebted to the District. (Record, p. 20.)

It was contended in the court below, and will be so contended here, by counsel for the assignees, who were claimants in three of the cases consolidated, that the judgment entered on the 22d day of June, 1896, was the final completed judgment in the case, which had been suspended by the order of May 28, 1894, and that they were entitled to recover the amounts awarded to them in that judgment, notwithstanding the terms of the repealing act of 1895.

This question of law was not passed upon by the court below. In truth, it was not directly presented to that court except in argument.

ASSIGNMENT OF ERRORS.

I. The court erred in rendering the judgment of the 22d day of June, 1896, in favor of the claimants.

II. The court erred in finding that the District of Columbia is indebted to Columbus J. Eslin, the original contractor in these cases, or his legal representatives, for labor done and materials furnished to the said District, at board rates, under the contracts mentioned in the aggregate sum of thirteen thousand four hundred and fifty-eight dollars and thirty-three cents.

III. The court erred in finding the several assignees whose cases were consolidated with the case of the original contractor were entitled to judgment in the sums reported by the referee with interest from February 1, 1876.

IV. The court erred in these conclusions of law:

> We now again hold that the District can recover back the overpayment; but this only as to Connolly, the contractor.
>
> Otherwise is it as to his assignees; between Connolly and the defendants it may be well enough to make a general account covering all his contracts, and, after striking a balance, to cause the defendant to pay the sum shown due him, or to authorize the defendant to recover the sum due from him as the result may be in Connolly's favor or against him. But an assignee of a contract which is profitable can not be charged

with his assignor's loss upon another—entirely different and losing—contract, when, as in this case, he has furnished the money upon which the contract was completed, with the knowledge of the defendant. The rights of Connolly's assignees, therefore, are (after the assignment of which defendant had knowledge) not to be confounded with Connolly's rights or his duties or his liabilities; if his assignees' assignment be of a profitable contract upon which something now remains due and unpaid, recovery can not be defeated by the fact that Connolly owes the District for overpayment upon another and losing contract with which the assignees are in no way connected.

ARGUMENT.

If the judgment rendered in this case on the 22d day of June, 1896, is a final judgment under the act of February 13, 1895 (28 Stat. L., 264), I admit the appeal is not properly taken, because by the repealing act of March 3, 1897 (29 Stat. L., 665, 669), all proceedings pending under the act of 1895 were vacated and no judgments rendered in pursuance of that act could be paid. The report of the referee, adopted and made the findings of facts, states that the account was stated under the act of 1895. (Record, p. 50.) The accounts are stated separately under the contracts set forth in the petition. Except for the provisions of the statute authorizing the allowance of board rates there is no doubt that Connolly was indebted to the District. There was then no $13,000 to be divided, so that upon

that basis the apportionment to the assignees could not be made.

It was, however, urged upon the court below that the claims of the assignees were based upon and supported by written contracts fixing a price for the work; that the judgments were based upon contract prices; that the rights of the assignees were based upon the contracts recited in the instruments of assignments, and were wholly independent of the transactions between Connolly and the district under other and independent contracts. They claimed that therefore their judgments rested upon the original contracts between Connolly and the district, and were valid and correct under the act of 1880.

The court stated no conclusions of law upon these questions to support the judgment. They were raised upon the argument of the motion for new trial, although that motion was really founded upon the decision in *The District of Columbia* v. *Johnson* (165 U. S., 330). The appeal, although applied for, had not yet been prosecuted to allowance. It was allowed March 1, 1900.

The cases appealed from were consolidated and tried together as one case, by orders of the court, under the provisions of section 2 of the act of June 16, 1880:

> When the validity of a number of claims depends substantially upon a like state of facts, they may be brought before the court in one petition in which all parties are joined, and may be tried together under such rules as the court may prescribe, and such judgment may be entered therein as the court may determine;

and cases of like kind may be consolidated and tried together whenever the court so orders.

The claims of the parties grew out of the contracts which Connolly had with the District for public works. There were sixteen of these contracts. The cases were sent to referees, who stated accounts upon each of the contracts, and made consolidated statements showing the condition of the final account between Connolly and the District. In the cases tried under the act of 1880, the court found that upon settlement of all the Connolly matters, Connolly was indebted, by reason of overpayments, to the District. (Rec., p. 20.)

In carrying on the public improvements in the District, out of which so much complication has arisen, assignments of certificates issued by the different boards and officials and of contracts and interests in contracts have been recognized by the Court of Claims. The act conferring jurisdiction on this court over outstanding claims specifies "certificates which may have been issued to the contractor *or his assignee;*" and provides (sec. 2) that the claims shall be prosecuted "by the contractor, his personal representatives, *or his assignee.*" These are the provisions by which the right to enforce the assignment of these *choses in action* is established and the assignee permitted to sue in his own name.

But the same statute, which is the statute of jurisdiction, contemplates the settlement of all the accounts between the contractors and the District by providing (sec. 2) that all the claims depending upon a like state of facts may be included in one suit and tried together;

and in section 3 it is made the duty of the Attorney-General to defend against said claims in like manner as he is now by law required to defend the United States, with the same power to interpose counterclaims and offsets, etc.

The defenses of counterclaims and offsets were provided for in sections 1059 and 1061, Revised Statutes.

The effect of these provisions of the statute of June 16, 1880, is to state the accounts of the contractor upon the original claims and any counterclaims and offsets, if any there be, and if there is a balance against him to render judgments for the District in that amount. If there is a balance in his favor, and there are assignees, judgment is given for the amount assigned to the assignees according to priority. This much was laid down in *Brown's Case* (17 C. Cls. R., 402), and has been adhered to.

The matter then concerns the assignees only. At the trial of the cases, the report of which is in 22 C. Cls. R., ——, the petitions of these assignees were dismissed (Rec., p. 20.) At the second trial no findings were found which would support a judgment for any or either of them. Everything was suspended. The findings in the last trial, under the act of 1895, would give certain amounts to these respective assignees; but the indebtedness of the District, whether to Connolly or the assignees, was upon the basis of board rates. The proceedings under the act of 1895 having been vacated, is there any fact in the record which would show the assignees entitled to the benefits of the judgment of

June 22, 1896? All the rights claimed arise under the contracts 243 and 1028.

At the the first trial the court found as follows:

On contract No. 243 and extensions there is due Connolly	$936.40
On contract No. 1028 there is due Connolly	1,645.09
	2,581.49

(Rec., p. 20.)

At the second trial the court did not find any definite amounts due upon either of these contracts, but left that question as it was before the granting of the motions for new trials.

How, then, with only $2,581.49 as due, the findings upon the offsets being excluded, could judgments aggregating $8,617.07 be correct?

But counsel insist their judgments are based upon contract prices, named in the written extensions of contract No. 243, as stated in the account made by the referee, Anderson (Rec., pp. 53–57); and they refer this finding back to the findings and conclusions as stated by Judge Davis in speaking for the court. But this can not be. The conclusion of law is stated thus: "As to this we can only repeat our former ruling herein, viz: This question has been so fully discussed in a recent opinion of the chief justice in the case of *Barnes* v. *The District of Columbia* (22 C. Cls. R., p. 366) that it is unnecessary to go over the ground again. We hold in these cases, as we held there, that these orders (of the board of public works) do not change 'the written contracts between the parties made before the orders were issued, and much less

contracts made thereafter.'" (Rec., p. 47.) This is from what was said by Judge Scofield, at the previous trial, in reference to this very contract. It is impossible to see, then, how the judgments for the amounts decreed can be sustained.

But the main dependence of these assignees to entitle them to recover at all is that the rights of these assignees are to be determined under these two contracts without reference to the obligations of Connolly under other and independent contracts.

This contention is certainly not intended to ignore entirely any consideration of the offsets or counterclaims pleaded in accordance with the express statute. It can only be maintained, if at all, upon the ground that the offsets must have arisen subsequent to the time of the notice of assignment.

I apprehend a very brief reference to the facts found will dispose of this argument, by showing that in no event can the principle apply to these assignees.

The papers relied upon to support the claim of Downman & Green are powers of attorney and agreements recited in full in the record (pp. 42–44). The first is dated December 1, 1874, and authorizes Downman & Green to sell and hypothecate, and sell so much of the bonds or certificates drawn under a power of attorney as may be necessary to reimburse them for all moneys advanced by them and for all proper costs, charges, and commissions, and upon the discharge of all such indebtedness and requires them to return and surrender and release the residue. The

power of attorney is to collect and receive all moneys, etc., arising from work done and to be done under contract No. 243. This power of attorney recites no consideration, but may be, and probably is, the power referred to in the memorandum.

The other agreements and powers of attorney are dated respectively May 25, 1875, July 31, 1875, and June 15, 1876. These contain as the consideration money advanced to carry on and complete certain contracts, and in the latter memorandum is recited: "Whereas the firm of Downman & Green, acting under a certain agreement with me, have from time to time advanced certain sums of money to me to be used in prosecution of certain contracts between me and the District of Columbia, which advances were made upon the terms set forth in said agreement; and whereas the said Downman & Green have at my request from time to time advanced other money to me for the payment of notes, interest, taxes, etc."

The court made a finding of fact that Downman & Green furnished the money to carry on contracts 243 and 1948. (This is an error, evidently, and refers to the file number of a letter in reference to work to be done by Connolly; but whether it embraced other contracts than 243 and 1028 does not appear.)

The court further finds:

> It does not appear that any settlement has ever been made by Downman & Green with Connolly, nor that any statement of advances and receipts by Downman & Green was ever

rendered to Connolly; it appears that Downman & Green made advances amounting in all to upward of $58,000, and that in February, 1876, their advances exceeded receipts in the sum of about $8,700. After this (July 9, 1880) Connolly revoked his powers of attorney to Downman & Green.

What part, if any, of the balance found due from Connolly to Downman & Green, for moneys advanced to carry on contracts 826 and 1028, is not found by the court.

In the first place, do these instruments constitute an equitable assignment which would authorize Downman & Green to sue for a balance due? Clearly not, unless the payments made under these contracts were made to Downman & Green; for, if Connolly retained any control over the fund—any authority to collect or any power of revocation—that is fatal to the claim of the assignee. (*Christmas* v. *Russell*, 11 Wall., 69.)

Under the instruments of December, 1874, he did both. They were merely agreements to pay out of a particular fund.

If Downman & Green did receive the certificates they have no cause of action, because evidence shows they were overpaid under the agreements with Connolly, and Connolly had revoked the powers of attorney before suit brought. After the several agreements and up to January 1, 1876, there were issued in certificates upon contract No. 243 and extensions about $70,000 (Record, p. 56). But Downman & Green's advances were only $58,000. If, therefore, under an

assignment, they received these moneys they were overpaid. The court make no finding.

But under the counterclaims: At the time of the first power of attorney Connolly was largely indebted to the District for overpayments made December 31, 1873.

At the time of the second power of attorney all the overpayments to Connolly had been made. (Record, p. 20.) The work under the extensions to contract No. 243, was all done after the time of the overpayments.

The applicable rule of law is a simple one. If a man takes an assignment of a *chose in action* he must take his chance as to the exact condition in which the party giving it stands. (*Mangles* v. *Dixon*, 3 H. L. C., 735.)

Ritchie's claim arises under an assignment from Downman & Green, dated the 11th day of February, 1878. He stands, therefore, in the precise condition of Downman & Green.

Galt's assignment is of a definite amount due for work claimed to have been done under the extensions of contract No. 243. It is directly from Connolly, and was executed long after all the work had been completed. What we have said above applies to his claim.

I have not lost sight of the contention of the claimant that, although it may be true that Connolly was a debtor to the District, yet this was a matter afterwards ascertained; that by the action of the agents and officers of the defendant it appeared at the time of the

assignment that the District was indebted to Connolly, not only in the amount stated in the assigned voucher, but in other amounts; and that, therefore, the creator of this security, having misled the assignee, was liable to him.

There are several answers to this. This is not in the nature of false information, as it might be in the case of an individual debtor. It has been decided that the supposed indebtedness to Connolly arose from illegal allowances made by the agents of the District. If this was a mistake of law, it was such a mistake as everybody was bound to take notice of. If the officers exceeded their authority, the Government can not be held liable. (*United States* v. *Kirkpatrick*, 9 Wh., 720; *United States* v. *The Bank of the Metropolis*, 15 Pet., 377; *McElrath* v. *The United States*, 12 C. Cls. R., 201, 217; 102 U. S., 426; *Pierce* v. *United States*, 7 Wall., 666.)

But this court has repeatedly held that this was more money thus paid than could be recovered back in a suit brought by the contractor or his representative to settle mutual accounts under the provisions of the statutes of counterclaim.

The assignee stands in the place of the assignor—entitled to the same rights, but no other. His right is subject to the qualification that the debtor may offset any claim or make any other equitable defense in a suit by the assignee which he might have done had it been brought by the assignor. (*Hilliard on Sales*, 452; *Sanborn* v. *Little*, 3 N. H., 539; *Shapley* v. *Bellows*, 4

N. H., 352; *Briggs* v. *Dorr*, 19 Johns., 95; *Green* v. *Hatch*, 12 Mass., 195.) The statute is affirmative of this equitable doctrine.

ROBERT A. HOWARD,
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LOUIS A. PRADT,
Assistant Attorney-General.

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No. 36.

Reply Brief of the Atty. Gen. [illegible] Howard for the Appl

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Clerk

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Filed Oct. 18, 1901.

No. 36.

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REPLY BRIEF FOR THE UNITED STATES.